

Chapter 16.32 DEDICATIONS AND RESERVATIONS

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16.32.010 Dedication of streets, alleys and other public rights-of-way or easements.

As a condition of approval of a tentative map, the subdivider shall dedicate, or make an irrevocable offer to dedicate, all parcels of land within the subdivision that are needed for improvements required by Chapter 16.36 BMC, including streets, alleys, other public rights-of-way, access rights and abutters' rights. In addition, the subdivider shall construct or agree to construct all required improvements in accord with Chapter 16.36 BMC. (Ord. 86-6, 1986).

16.32.020 Waiver of direct access rights.

The city may require as a condition of approval of a tentative map that dedications or offers of dedication of streets include a waiver of direct access rights to any such street from any property within or abutting the subdivision. Upon acceptance of the dedication, such waiver shall be reflected in an appropriate title document, which shall be recorded and shall become effective in accordance with its provisions. (Ord. 86-6, 1986).

16.32.030 Dedications.

All dedications of property to the city for public purposes shall be made in fee title, except that, at the city's discretion, the grant of an easement may be taken for the following purposes: open space easements, emergency access easements, scenic easements or public utility easements. All dedications in fee and grants of easements shall be free of liens and encumbrances except for those which the city, in its discretion, determines would not conflict with the

intended ownership and use. The city may elect to accept an irrevocable offer of dedication in lieu of dedication of fee title. (Ord. 86-6, 1986).

16.32.035 Rejection of all offers of dedication.

Unless, as to any given dedication of land and/or improvements, the improvements related thereto have been satisfactorily completed and certified as such by the city engineer, at the time the city council approves a final map or the city engineer approves a final parcel map, the council shall also reject all offers of dedication or dedications of land and/or improvements made part of the final map and the city engineer shall reject all dedications of or offers of dedication that are made by a statement on the parcel map. The city clerk shall certify or state on the map the action taken by the city council or the city engineer. (Ord. 89-2 N.S. § 14, 1989).

16.32.040 Parkland dedication.

A. General. This section is enacted pursuant to the authority granted by the Subdivision Map Act and the general police power of the city and is for the purpose of providing such additional park and recreational facilities and open space as is appropriate pursuant to the general plan of the city. The park and recreational facilities for which dedication of land and/or payment of a fee is required by this chapter are in accordance with the policies, principles and standards for park and recreational facilities contained in the general plan.

B. Requirements. As a condition of approval of a tentative map or parcel map, the subdivider shall dedicate land, pay a fee in lieu thereof, or both, at the option of the city, for park or recreational purposes at the time and according to the standards and formula contained in this chapter. The land dedicated or the fees paid, or both, shall be used for community and neighborhood parks and facilities in such a manner that the locations of such parks and facilities bear a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the subdivision generating such dedication or fees, or both. Fees required under this section shall be established by the city council by resolution. (See Resolution No. 02-147, 9/3/02).

C. General Standard. It is found and determined that the public interest, convenience, health, safety and welfare require that five acres of property for each 1,000 persons residing within the city be devoted to local park and recreational purposes.

D. Standards and Formula for Dedication of Land. Where a park or recreational facility has been designated in the general plan and is to be located in whole or in part within the proposed subdivision and is reasonably related to serving the present and future needs of the residents of the subdivision, the subdivider shall dedicate land for park and recreation facilities sufficient in size and topography to

meet that purpose. The amount of land to be provided shall be determined pursuant to the following standards and formula:

$$\frac{\text{Acres of Parkland}}{\text{Dwelling Unit}} = \frac{0.005 \text{ Acres}^*}{\text{Persons}} \times \frac{\text{Average No. of Persons}}{\text{Dwelling Unit}}$$

* Based on five acres of parkland per 1,000 population

The following parkland dedication table has been established pursuant to Section 66477(b) of the California Government Code:

Dwelling Type	Average No. Persons/Dwelling Unit	Acres per Dwelling Unit
Single-family	3.0	0.015
Duplexes and low-density multifamily	2.5	0.013
Medium- and high-density multifamily	2.0	0.010

For the purposes of this section, the number of proposed dwelling units shall be determined as follows: In areas zoned for one dwelling unit per lot or parcel, the number of dwelling units shall equal the number of parcels indicated on the tentative map. When all or part of the subdivision is located in an area zoned for multiple dwelling units per parcel, and an application for concurrent processing of a development project under BMC Title 17, Zoning, has been accepted as complete, the number of dwelling units shall equal the number of units proposed for development. If no such application has been submitted, the number of proposed dwelling units in the area so zoned shall equal the maximum number of dwelling units allowed under that zone. For residential condominium projects, the number of dwelling units shall be the number of condominium units on the tentative map.

The term "new dwelling unit" does not include dwelling units lawfully in place prior to the date on which the tentative map is approved.

Lands to be dedicated or reserved for park and/or recreational purposes shall be suitable in the opinion of the community development director and the director of parks and recreation in location, topography, environmental characteristics and development potential as related to the intended use. The primary intent of this chapter shall be construed to provide the land for functional recreation units of local or neighborhood service, including but not limited to: tot lots, play lots, playgrounds, neighborhood parks, playfields, community or district parks, and

other specialized recreational facilities that may serve the family group and also senior citizens' activities. Principal consideration shall be given therefore to lands that offer:

1. A variety of recreational potential for all age groups;
2. Recreational opportunities within walking distance from residents' homes;
3. Possibility for expansion or connection with school grounds;
4. Integration with hiking, riding and bicycle trails, natural stream reserves and other open space;
5. Coordination with all other park systems;
6. Access to at least one existing or proposed public street.

E. Formula for Fees in Lieu of Land Dedication.

1. General Formula. If there is no park or recreational facility designated in the general plan to be located in whole or in part within the proposed subdivision to serve the immediate and future needs of the residents of the subdivision, the subdivider shall, at the city's discretion, either dedicate land in the amount provided in subsection (D) of this section or pay a fee in lieu of dedication equal to the value of the land prescribed for dedication in subsection (D) of this section and in an amount determined in accord with the provisions of subsection (G) of this section.

2. Fees in Lieu of Land – 50 Parcels or Fewer. If the proposed subdivision contains 50 parcels or fewer and has no park or recreational facility, the subdivider shall pay a fee equal to the land value of the portion of the park or recreational facilities required to serve the needs of the residents of the proposed subdivision as prescribed in subsection (D) of this section and in an amount determined in accordance with the provisions of subsection (G) of this section.

The city may elect to accept a voluntary offer of dedication of land in lieu of all or a portion of the required fee, consistent with the provisions of subsection (H) of this section.

3. Use of Money. The money collected shall be used, in accordance with the schedule developed pursuant to subsection (K) of this section, for the purpose of developing new or rehabilitating existing neighborhood or community park or recreational facilities reasonably related to serving the subdivision, including the purchase of necessary land and/or improvement

of such land for park or recreational purposes. The money shall be committed within five years after payment thereof or the issuance of building permits on one-half of the lots created by the subdivision, whichever occurs later. If the money is not committed, it shall be distributed and paid to the then record owners of the subdivision in the same proportion that the size of each lot bears to the total area of all lots in the subdivision.

F. Criteria for Requiring Both Dedication and Fee. If the proposed subdivision contains more than 50 parcels, the subdivider shall both dedicate land and pay a fee in lieu of dedication in accordance with the following:

1. When only a portion of the land to be subdivided is proposed in the general plan as the site for a local park or recreational facility, such portion shall be dedicated for local park purposes and a fee computed pursuant to the provisions of subsection (G) of this section shall be paid for any additional land that would have been required to be dedicated pursuant to subsection (D) of this section.
2. When a major part of the local park or recreational site has already been acquired by the city and only a small portion of land is needed from the subdivision to complete the site, such portion shall be dedicated, and a fee, computed according to subsection (G) of this section, shall be paid in an amount equal to the value of the land which would otherwise have been required to be dedicated according to this section.

G. Amount of Fee in Lieu of Parkland Dedication. When a fee is required to be paid in lieu of parkland dedication, the amount of the fee shall be based upon the estimated fair market value of the land being subdivided and the estimated fair market value of the land which would otherwise be required to be dedicated according to subsection (D) of this section. Such fees shall be based on a fee schedule adopted by the city council by resolution. (See Resolution No. 02-147, 9/3/02).

If the subdivider objects to the fair market value determination used in the fee schedule, the subdivider may request the city engineer to obtain two written appraisal reports prepared and signed by qualified real estate appraisers acceptable to the city. All costs required to obtain such appraisals shall be borne by the subdivider. The appraisals shall be made immediately prior to filing of the final map or parcel map. The subdivider shall notify the city engineer of the expected filing date at least six weeks prior to filing the final map. For purposes of determining the fair market value of a buildable acre in the proposed subdivision, the appraisers shall consider, but not necessarily be limited to:

1. Approval of and conditions of the tentative subdivision map;

2. The Benicia general plan and zoning for the area;
3. The location and site characteristics of the property; and
4. Off-site and on-site improvements facilitating use of the property.

The determined fair market value shall be the higher of the two appraisals.

H. Determination of Land or Fee. Whether the city accepts land dedication, or elects to require the payment of a fee in lieu of, or a combination of both, shall be determined by consideration of the following:

1. Policies, standards and principles for park and recreation facilities in the general plan;
2. Topography, geology, access and location of land in the subdivision available for dedication;
3. Size and shape of the subdivision and land available for dedication;
4. Feasibility of dedication;
5. Compatibility of dedication with the general plan;
6. Availability of previously acquired park property.

The determination by the city as to whether land shall be dedicated, or whether a fee shall be charged, or a combination, shall be final and conclusive.

I. Credit for Improvements and Private Open Space. If the subdivider provides park and recreational improvements to the dedicated land, the value of the improvements together with any equipment location thereon shall be a credit against the payment of fees or dedication of land required by this section. The value shall be determined by the city engineer and shall be subject to appeal to the city council. If appealed, the burden of proof shall lie with the subdivider.

Planned developments, real estate developments, stock cooperatives, and condominiums shall receive partial credit, not to exceed 50 percent, against the amount of land required to be dedicated or the amount of the fee imposed pursuant to this section, for the value of private open space within the development which is usable for active recreational uses, if the city council, on the recommendation of the parks and recreation commission, finds that it is in the public interest to do so and that the following standards are met:

1. That yards, court areas, setbacks and other open areas required by BMC Title 17, Zoning, shall not be included in the computation of the private open space;

2. That the private ownership and maintenance of the open space is adequately provided for by recorded written agreement, conveyance, or restrictions;
3. That the use of the private open space is restricted for park and recreational purposes by recorded covenant, which runs with the land in favor of the future owners of property, and which cannot be defeated or eliminated without the consent of the city or its successor;
4. That the proposed private open space is reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, geology, access, and location; and
5. That facilities proposed for the open space are in substantial accord with the provisions of the general plan.

J. Procedure.

1. At the time of the approval or conditional approval of the tentative map, the city council shall determine, after a report and recommendation from the parks and recreation department, whether land, in-lieu fees, or a combination of land and fees shall be dedicated and/or paid by the subdivider.
2. The city council may approve, modify, or disapprove the recommendation of the parks and recreation department.
3. The recommendation of the parks and recreation department shall include the following:
 - a. The amount of land required; or
 - b. That a fee be charged in lieu of land; or
 - c. That a combination of land and a fee be required; and
 - d. The location of the parkland and, where appropriate, the siting and conceptual design of the park facilities appurtenant thereto, to be dedicated or used in lieu of fees; and
 - e. The approximate time when the development of the park or recreation facility shall commence.
4. At the time of the recording of the final map or parcel map, the subdivider shall dedicate the land and/or pay the fees as determined by the city. At the

discretion of the city, fees may be paid prior to the issuance of any building permit for any structure in the subdivision.

5. Open space covenants for private park or recreational facilities shall be submitted to the city prior to the approval of the final map or parcel map and, if approved, shall be recorded concurrently with the final map or parcel map.

K. Schedule of Use. At the time of the approval of the final map or parcel map, the city shall develop a schedule specifying how, when and where it will use the land or fees, or both, to develop or rehabilitate park or recreational facilities to serve the residents of the subdivision.

L. Not Applicable to Certain Subdivisions. The provisions of this section do not apply to: (1) commercial or industrial subdivisions; or (2) to condominium projects or stock cooperatives that consist of the subdivision of airspace in an existing apartment building which is more than five years old when no new dwelling units are added.

M. Fees in Effect at Time Required to Be Paid. The amount of the fees to be paid under this chapter shall be the amount of the fees in effect at the time the fees are required to be paid. (See Resolution No. 02-147, 9/3/02). (Ord. 92-7 N.S. §§ 2, 3, 1992; Ord. 86-6, 1986).

16.32.050 School site dedication.

A. General. As a condition of approval of a tentative map, a subdivider who develops or completes the development of one or more subdivisions within one or more school districts maintaining an elementary school shall dedicate to the school district or districts such lands as the city, in consultation with the school district, shall deem to be necessary for the purpose of constructing thereon elementary schools necessary to assure the residents of the subdivision adequate public school service.

B. Procedure. The requirement of dedication shall be imposed at the time of approval of the tentative map. If within 30 days after the requirement of dedication is imposed by the city the school district does not offer to enter into a binding commitment with the subdivider to accept the dedication, the requirement shall be automatically terminated. The required dedication may be made any time, before, concurrently with, or up to 60 days after the filing of the final map or parcel map on any portion of the subdivision.

C. Payments to Subdivider for School Site Dedication. The school district shall, if it accepts the dedication, repay to the subdivider or his or her successors the original cost to the subdivider of the divided land, plus a sum equal to the total of the following amounts:

1. The cost of any improvements to the dedicated land since acquisition by the subdivider;
2. The taxes assessed against the dedicated land from the date of the school district's offer to enter into the binding commitment to accept the dedication;
3. Any other costs incurred by the subdivider from the date of the school district's offer to enter into a binding commitment to accept the dedication that pertain to maintenance of such dedicated land, including interest costs incurred on any loan covering such land.

D. Exemptions. The provisions of this section shall not be applicable to a subdivider who has owned the land being subdivided for more than 10 years prior to the filing of the tentative map. (Ord. 86-6, 1986).

16.32.060 Reservations.

A. General. As a condition of approval of a tentative map, the subdivider shall reserve sites, appropriate in area and location, for parks, recreational facilities, fire stations, libraries or other public uses according to the standards and formula contained in this section.

B. Standards for Reservation of Land. Where a park, recreational facility, fire station, library, or other public use is shown on the general plan or an adopted specific plan, the subdivider may be required by the city to reserve sites as so determined by the city in accordance with the policies and standards contained in the general plan or the adopted specific plan. The reserved area must be of such size and shape as to permit the balance of the property within which the reservation is located to develop in an orderly and efficient manner. The amount of land to be reserved shall not make development of the remaining land held by the subdivider economically infeasible. The reserved area shall be consistent with the general plan or the adopted specific plan and shall be in such multiples of streets and parcels as to permit an efficient division of the reserved area in the event that it is not acquired within the prescribed period.

C. Procedure. The public agency for whose benefit an area has been reserved shall, at the time of approval of the final map or parcel map, enter into a binding agreement to acquire such reserved area within two years after the completion and acceptance of all improvements unless the period of time is extended by mutual agreement.

D. Payment to Subdivider. The purchase price for the reserved area shall be the market value thereof at the time of the filing of the tentative map plus the taxes against the reserved area from the date of the reservation and any other costs

incurred by the subdivider in the maintenance of the reserved area, including interest costs incurred on any loan covering the reserved area.

E. Termination. If the public agency for whose benefit an area has been reserved does not enter into a binding agreement in accordance with this section, the reservation of the area shall automatically terminate. (Ord. 86-6, 1986).

16.32.070 Local transit facilities.

As a condition of approval of a tentative map, the subdivider shall dedicate, or make an irrevocable offer of dedication of, land within the subdivision for local transit facilities such as shelters, benches, bus turnouts, park-and-ride facilities and similar items which directly benefit the residents of the subdivision, if:

A. The subdivision as shown on the tentative map has the potential for 200 dwelling units or more if developed to the maximum density shown on the general plan, or contains 100 acres or more; and

B. The city finds that transit services are or will, within a reasonable time period, be made available to the subdivision.(Ord. 86-6, 1986).

16.32.080 Bridges and major thoroughfares.

A. Purpose. The purpose of this section is to make provision for assessing and collecting fees as a condition of approval of a final map or as a condition of issuing a building permit for the purpose of defraying the actual or estimated costs of constructing bridges or major thoroughfares pursuant to Section 66484 of the Subdivision Map Act, and in order to implement the circulation element of the general plan and, in the case of bridges, the transportation provisions thereof.

B. Definitions. For the purposes of this section, the following words and phrases shall have the following meanings:

1. "Area of benefit" shall mean the geographic area that benefits from the improved accessibility attributable to construction of a bridge or major thoroughfare. This includes lands with direct and indirect access to the new transportation facility.
2. "Construction" means design, acquisition of right-of-way, administration of construction contracts and actual construction.
3. "Major thoroughfare" means a roadway as shown on the circulation element of the general plan whose primary purpose is to carry through traffic and provide a network connecting to the state highway system.

C. Payment of Fees Generally.

1. Prior to filing a final map which includes land within an area of benefit established pursuant to this chapter, the subdivider shall pay, or cause to be paid, any fees established and apportioned to such property pursuant to this section for the purpose of defraying the actual or estimated cost of constructing major thoroughfares, including related improvements such as traffic signals, landscaping, and medians.

2. Prior to the issuance of a building permit for construction on any property within an area of benefit established pursuant to this section, the applicant for such permit shall pay, or cause to be paid, any fees established and apportioned pursuant to this section for the purpose of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways or canyons or constructing major thoroughfares, including related improvements, such as traffic signals, landscaping and medians, unless such fees have been paid pursuant to subsection (C)(1) of this section.

3. Notwithstanding the provisions of subsections (C)(1) and (C)(2) of this section:

a. Payment of bridge fees shall not be required unless the planned bridge facility is an original bridge serving the area or an addition to any existing bridge facility serving the area at the time of adoption of the boundaries of the area of benefit.

b. Payment of major thoroughfare fees shall not be required unless the major thoroughfares are in addition to, or a reconstruction of, any existing major thoroughfares serving the area at the time of the adoption of the area of benefit.

D. Consideration in Lieu of Fees. Upon application by the subdivider or applicant for a building permit, the city council, in the case of subdivisions of five or more parcels, or the community development director, in the case of subdivisions of four or less parcels, may accept consideration in lieu of the payment of fees required pursuant to this section; provided, that the city council or community development director, as the case may be, first finds, upon recommendation of the public works director, that the substitute consideration has a value equal to or greater than the fee; and provided further, that the substitute consideration is in a form acceptable to the city council or community development director, as the case may be.

E. Public Hearing. Prior to establishing an area of benefit, a duly noticed public hearing shall be held by the city council, at which time the boundaries of the area of benefit, the costs, whether actual or estimated, and a fair method of allocation of costs to the area of benefit and fee apportionment, and the fee to be collected, shall be established.

F. Amount. The amount of the fees and the areas of benefit established pursuant to this section may be established by ordinance or resolution.

G. Exemptions. Notwithstanding the provisions of subsection (F) of this section, payment of such fees shall not be required for:

1. The use, alteration or enlargement of an existing building or structure or the erection of one or more buildings or structures accessory thereto, or both, on the same lot or parcel of land; provided, that the total value, as determined by the building official, of all such alteration, enlargement or construction completed within any one-year period does not exceed one-half of the current market value, as determined by the building official, of all existing buildings on such lot or parcel of land, and the alteration or enlargement of the building is not such as to change its classification of occupancy as defined by BMC Title 15, Buildings and Construction.

2. The following accessory buildings and structures: private garages, children's playhouses, radio and television receiving antennas, windmills, silos, tank houses, shops, barns, coops and other buildings which are accessory to one-family or two-family dwellings.

H. Protest.

1. At any time not later than the hour set for hearing objections to the proposed bridge facility or major thoroughfare, any owner of property to be benefited by the improvement may file a protest against the proposed bridge facility or major thoroughfare or against the extent of the area to be benefited by the improvements or against both of them. Such protests must be in writing and must contain a description of the property in which each signer thereof is interested, sufficient to identify such property, and, if the signers are not shown on the last equalized assessment roll as the owners of such property, must contain or be accompanied by written evidence that such signers are the owners of such property. All such protests shall be delivered to the city clerk and no other protest or objections shall be considered. Any protest may be withdrawn, in writing, by the owners making such protests, at any time prior to the conclusion of the public hearing.

2. If there is a written protest filed with the city clerk by the owners of more than one-half of the area of the property to be benefited by the improvement, and sufficient protests are not withdrawn so as to reduce the area represented to less than one-half of that to be benefited, then the proposed proceedings shall be abandoned and the city council shall not, for one year from the filing of that written protest, commence or carry on any

proceedings for the same improvement, or that portion thereof so protested against, under the provisions of this section. (Ord. 86-6, 1986).

16.32.090 Supplemental improvement capacity.

A. As a condition of approval of a tentative map, the city may impose a requirement that improvements installed by the subdivider for the benefit of the subdivision contain supplemental size, capacity, number or length for the benefit of property not within the subdivision and that those improvements be dedicated to the public. However, when such supplemental size, capacity, number or length is solely for the benefit of property not within the subdivision, the city shall, subject to the provisions of the Subdivision Map Act, enter into an agreement with the subdivider to reimburse the subdivider for that portion of the cost of such improvements equal to the difference between the amount it would have cost the subdivider to install such improvements to serve the subdivision only and the actual cost of such improvements.

B. The city council shall determine the method for payment of the costs required by a reimbursement agreement which may include but is not limited to the establishment and maintenance of local benefit districts for the levy and collection of such charge or costs from the property benefited.

C. No charge, area of benefit or local benefit district shall be established unless and until a public hearing is held thereon by the city council and the city council finds that the charge, area of benefit or local benefit district is reasonably related to the cost of such supplemental improvements and the actual ultimate beneficiaries thereof.

D. In addition to the notice required by BMC 16.04.060(E), written notice of the hearing shall be mailed to those who own property within the proposed area of benefit as shown on the last equalized assessment roll, and the potential users of the supplemental improvements insofar as they can be ascertained at the time (10 days prior to the date established for the hearing). (Ord. 86-6, 1986).

16.32.100 Drainage fees.

Reserved. (Ord. 86-6, 1986).

16.32.110 Solar access easements.

A. As a condition of approval of a tentative map, the city may impose a requirement that the subdivider dedicate easements for the purpose of assuring that each parcel or unit in the subdivision shall have the right to receive sunlight across adjacent parcels or units in the subdivision for any solar energy system. In establishing such easements the city shall consider the feasibility, contour, configuration of the parcel to be divided, and cost. Required easements shall not result in reducing allowable densities or the percentage of a lot which may be

occupied by a building or a structure under applicable planning and zoning in force at the time such tentative map is filed.

B. At the time of tentative map approval, the community development director or the planning commission, as may be the case, shall specify: (1) the standards for determining the exact dimensions and locations of such easements; (2) any restrictions on vegetation, buildings, and other objects that would obstruct the passage of sunlight through the easement; and (3) conditions, if any, under which an easement may be revised or eliminated.

C. This section is not applicable to conversion projects. (Ord. 86-6, 1986).

16.32.120 Other public facilities.

As a condition of approval of a tentative map, the subdivider shall be required to dedicate land, pay fees, or both, for fire stations, library sites, child day care, public art or any other public facilities pursuant to, and in order to implement, the provisions of the general plan regarding such facilities. (Ord. 86-6, 1986).

The Benicia Municipal Code is current through Ordinance 12-06, passed September 18, 2012.

Disclaimer: The City Clerk's Office has the official version of the Benicia Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.ci.benicia.ca.us/>
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